***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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Writ Petition No: 21245 of 2004

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% 08.04.2005

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Between:

Manepalli Mohan Rao, S/o. Late Krishna Rao,
R/o. Shyamalanagar, Rajahmundry, E.G. District.

..... PETITIONER

AND

1 S. Suresh Kumar, I.A.S., Project Officer,
R/o. Rampa Chowdavaram, Rajahmundry, East Godavari District.
2 The Sub-Divisional Magistrate, Rajahmundry, East Godavari District.
3 The Superintendent of Police, Kakinada, East Godavari District.
4 The Station House Officer, I Town L&O Police Station, Rajahmundry,
East Godavari District.
5 M.A,. Khan Bahadur, Assistant Sub-Inspector, 1 Town L & O Police Station, Rajahmundry,
East Godavari District.

.....RESPONDENT(S)

! Counsel for the Petitioner: Sri K Balagopal

^ COUNSEL FOR THE RESPONDENT No.1: Sri C.Padmanabha Reddy, Senior Counsel

and G.P. for Home for Respondents 2 to 5

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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Rajahmundry, East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ Order or Direction more particularly one in the nature of Writ of Certiorari,

to call for the records pertaining to the impugned order of imprisonment dt. 25-3-2004 passed by the 1st respondent and quash the same as illegal, arbitrary, unfair, volative of Article 21 of Constitution of India and to grant

Counsel for the Petitioner: MR.K.BALAGOPAL

Counsel for the Respondent No.1: Sri C.Padmanabha Reddy, Senior Counsel

Counsel for the Respondent Nos.2 to 5: GP FOR HOME

The Court at the admission stage made the following :

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.21245 OF 2004

JUDGMENT:

Petitioner challenges the order of imprisonment dated

25-03-2004, passed against him, by the 1st respondent, as being illegal, arbitrary and violative of Article 21 of the Constitution of India. He seeks consequential reliefs also.

2. Petitioner contends that he was kept in the Central Prison, Rajahmundry, in relation to alleged offence under Arms Act, and that he was released on 21-03-2004. According to him, the 4th respondent, Station House Officer, 1 Town L&O Police Station, Rajahmundry, who, at the relevant point of time, was the 5th respondent, whisked away from the prison, and kept in Police Station for about 3 days. He alleges that on 25-03-2004, he was produced before the 2nd respondent, Sub-Divisional Magistrate, who, at the relevant point of time, was the 1st respondent, and there, the impugned order was passed for imprisonment, for a period of one year,

without conducting any inquiry, trial or, without giving him an opportunity of defending himself. He submits that the 1st respondent did not follow the procedure prescribed under Sections 111 and 116 of Cr.P.C., and had passed the impugned order, just by acceding to the request of the 5th respondent.

3. The 1st respondent filed a counter affidavit. It is stated that the petitioner was involved in several crimes, under various provisions of law, and that the 5th respondent had registered the Crime No.145 of 2004, under Section 110 (e) of Cr.P.C., on

21-03-2004. It is stated that the 5th respondent arrested the petitioner, as a preventive measure, and had produced before him, with a view to take prohibitory steps, in view of the impending allegations.

4. The 1st respondent claims to have been satisfied with the initiation of proceedings under Section 110 Cr.P.C., for exercise of powers under Section 111 Cr.P.C., against the petitioner. He states that since the petitioner failed to comply with the condition, as to furnishing of security, an order of his imprisonment was passed. An additional counter affidavit was filed by the 1st respondent. In this, he stated that he passed a preliminary order on 22-03-2004, granting time to the petitioner till 11:00 a.m., on 24-03-2004, to show cause as to why he should not be required to furnish security, and since the petitioner did not comply the same, he committed the petitioner to prison, under Section 122 of Cr.P.C., for a period of one year. He ultimately stated that he committed a mistake in sending the petitioner to prison, without holding an inquiry, under Section 116 Cr.P.C. He stated that it was never his intention to violate the law, and that he regrets for what has happened.

5. Learned counsel for the petitioner, learned Government Pleader for Home and Sri C. Padmanabha Reddy, learned Senior Counsel, appearing for the 1st respondent, have advanced extensive arguments.

6. The short question that falls for consideration in this writ petition is, as to whether the 1st respondent, who held the office of the 2nd respondent, at the relevant point of time, passed the impugned order, against the petitioner, in accordance with law.

7. Chapter VIII of the Cr.P.C., prescribes the procedure for obtaining security from the suspected persons, for keeping peace and for the good behaviour. The power

under Section 106, is exercisable by the Court of Sessions, or Court of Magistrate of First Class, under the circumstances stipulated therein. The power to take necessary steps under Sections 107 to 111 and to pass orders under Section 122 of the Code, is conferred on the Executive Magistrates.

8. Initiation of proceedings under Section 107 is a preventive measure, which can be taken, even before any offence, as such, has taken place. The steps under Sections 108 to 110, are to be taken against the persons, who are already found to have committed offences, punishable under various Sections of I.P.C. Section 111 Cr.P.C., prescribes the procedure to be followed, for the proceedings, initiated under Sections 107 to 110. The Executive Magistrate is required to make an order, in writing, setting forth such offences, the information received by him; the amount of the bond to be executed, and the term, for which is it to be enforced, in addition to stipulating the number, and nature of sureties to be furnished. Section 116 Cr.P.C., mandates that the order passed under Section 111 Cr.P.C., shall be explained to the concerned person, and that the procedure applicable to summons cases shall be followed in the matter of trial, and recording of evidence. It is after completion of such inquiry, that an order under Section 117 Cr.P.C. is to be passed, to require the concerned person to execute the bond, with or without securities, if the Executive Magistrate is satisfied, that it is necessary, for keeping the peace, or maintaining good behaviour. It is only when the person, who is required to give the security under Section 117, fails to do so, that the Executive Magistrate can pass an order under Section 122, directing the detention of such person, until the expiry of the period, for which the security was directed to be furnished. This, in a nutshell, is the scheme, for requiring the execution of bonds, to keeping peace, and the matters connected, thereto.

9. In the instant case, the 1st respondent passed an order on 22-03-2004, under Section 111, directing the petitioner to explain as to why he cannot be required to execute a bond for Rs.5,000/-, with two sureties, for keeping good behaviour, for a period of one year. Since the petitioner was produced before the 1st respondent, he was required to take further steps, as provided for under Section 116. The trial and recording of evidence, prescribed for summons cases, was to have ensued. Thereafter, orders under Section 117 were to have been passed, depending on the satisfaction of the 1st respondent, in the light of the inquiry and recording of evidence, to be undertaken, under sub-section (2) of Section 116.

10. None of these steps were followed or observed. Straightaway, order was passed on 24-03-2004, directing that the petitioner be detained in the prison, for a period of one year. Thus, it is evident that there was a clear infraction and violation of the specific and mandatory provisions of Cr.P.C., and thereby, the fundamental rights of the petitioner, guaranteed under Article 21 of the Constitution of India, were violated.

11. If an authority, discharging functions under various provisions of Cr.P.C., be it, a regular Criminal Court, or an Executive Magistrate, passes an order, the superior Court cannot require the officer, who exercised the power, to offer any explanation, even if a different view is possible, on merits. Where, however, the entire procedure, prescribed under Cr.P.C. is ignored, an order of detention or imprisonment is passed, the matter needs a different consideration. The 1st respondent has given a total go-bye to the mandatory procedure. It would not be a matter of any injustice to the effected persons alone. It is a matter of concern, touching on the very functioning of the system. It was in this context, that the necessity to examine the explanation, offered by the 1st respondent arose.

12. Though an attempt was made at the initial stage, to sustain the action, at latter stage, obviously, after realizing the gravity of the matter, the 1st respondent admitted that a procedural irregularity, touching on the liberty of the petitioner has occurred, and he assured this Court that such instances do not be permitted to recur. Inasmuch as the 1st respondent was almost at the entry of his career at the relevant point of time, this Court takes a lenient view of the matter, and takes on record, the explanation offered by him.

13. Even assuming that the steps against the petitioner were warranted, having regard to the background; he cannot be denied the procedural safeguards, provided for under the I.P.C. The impugned order cannot be sustained in law. The same is accordingly set aside.

14. The petitioner suffered the punishment of imprisonment for a substantial period, without being subjected to any trial. It is not a case where, any order of imprisonment or conviction was passed against him, and the same is set aside in the appeal or revision. He has been subjected to injustice and imprisonment in flagrant violation of

the mandatory provisions. Therefore, this Court is of the view, that the petitioner needs to be compensated for the wrongful acts of the State. At the same time, the petitioner cannot be permitted to gain an impression that a procedural mistake committed by the respondents turns out to be a reward to him.

15. In view of the totality of the circumstances of the case, the writ petition is allowed, with the following directions:

a. The order impugned in the writ petition is set aside, as being violative of the provisions of Cr.P.C. and Article 21 of the Constituting of India.

b. The State, through the 2nd respondent, Sub-Divisional Magistrate, shall pay compensation of Rs.10,000/-
(ten thousand) to the petitioner, for the wrongful imprisonment of the petitioner, on the basis of the impugned order.

c. Out of the amount, referred in Clause (b), Rs.5,000/- (five thousand) shall be paid to the petitioner, and the balance shall be kept in a fixed deposit, in Nationalized Bank, in the name of the petitioner, by the 1st respondent, for one year, within a period of six weeks, from the date of receipt of copy of this judgment.

d. The F.D.R., for the said amount, shall be retained by the 1st respondent, for a period of one year. In the event of any cases being registered against the petitioner, for offences punishable with imprisonment, exceeding one year; in the meanwhile, the petitioner shall not be entitled for the amount covered by the F.D.R. If no such cases are registered, the 1st respondent shall hand over the F.D.R. to the petitioner, on expiry of the period of one year.

e. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.08-04-2005.

Note:

L.R. copy to be marked.

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// TRUE COPY //

SECTION OFFICER

To

One fair copy to the Hon'ble Mr.Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1 S. Suresh Kumar, I.A.S., Project Officer,
R/o. Rampa Chowdavaram, Rajahmundry, East Godavari District.
2 The Sub-Divisional Magistrate, Rajahmundry, East Godavari District.
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Rajahmundry, East Godavari District

6) 2 CCs to G.P. for Home, High Court of A.P., High Court Buildings, Hyderabad (OUT)

7) 2 CD copies

8) The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

9) The Secretary, A.P.Advocates Asscoation Library, High Court buildings, Hyderabad.

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